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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE:) Chapter 7
)
LEGENDARY FIELD EXHIBITIONS, LLC;) CASE NO. 19-50900-CAG
)
AAF PLAYERS, LLC;) CASE NO. 19-50902-CAG
)
AAF PROPERTIES, LLC;) CASE NO. 19-50903-CAG
)
EBERSOL SPORTS MEDIA GROUP, INC;) CASE NO. 19-50904-CAG
)
LFE 2, LLC;) CASE NO. 19-50905-CAG
)
WE ARE REALTIME, LLC;) CASE NO. 19-50906-CAG
)
DEBTORS.) (SUBSTANTIVE CONSOLIDATION OF
) ALL 6 CASES INTO ONE CASE,
) LEGENDARY FIELD EXHIBITIONS,
) LLC, CASE NO. 19-50900-CAG)
) JOINTLY ADMINISTERED UNDER
) CASE NO. 19-50900-CAG

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**REPLY TO CREDITORS AND PARTIES-IN-INTERESTS COLTON
SCHMIDT & REGGIE NORTHUP’S, INDIVIDUALLY, AND ON
BEHALF OF OTHERS SIMILARLY SITUATED, OBJECTION TO
THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
WITH MGM RESORTS INTERNATIONAL AND OPERATIONS, INC.**

Randolph N. Osherow, in his capacity as the Chapter 7 Trustee (the “Trustee”) of Ebersol Sports Media Group, Inc., AAF Players, LLC, AAF Properties, LLC, Legendary Field Exhibitions, LLC, LFE 2, LLC, and We Are Realtime, LLC, (collectively, the “Debtors”), hereby respectfully submits his reply (the “Reply”) to creditors and parties-in-interests Colton Schmidt & Reggie Northup’s, individually, and on behalf of others similarly situated (collectively referred to herein as the “Creditors”), objection (the “Objection”) to the Motion for Approval of

1 Settlement Agreement (the "Motion")¹ with MGM Resorts International Operations, Inc.
2 ("MGM"), pursuant to 11 U.S.C. § 105 and Bankruptcy Rule 9019.

3 **REPLY**

4 1. Distilled, the Objection argues that the Motion should be denied because: (i) the
5 proposed settlement's terms do not represent fair value for the underlying IP; and (ii) MGM had
6 an unfair advantage during the sale process. In presenting these arguments, the Objection fails to
7 recognize that the Settlement Agreement – which fairly values the IP given its current state - was
8 the product of thoughtful negotiations between the parties. Specifically, the Trustee conducted a
9 diligent and fair process, with the assistance of an able and independent team of professionals.
10 Taken together, the Objection fails to present a valid reason for the Creditors to stymie the
11 Trustee's attempts to enter into an arm's-length settlement with MGM that is in the best interests
12 of these estates.
13

14 **The Intellectual Property is Fairly Valued**

15 2. The Objection primarily argues the Trustee fails to properly evaluate the true value
16 of the Debtors' intellectual property. Objection, 3:2-4. A proper evaluation, the Creditors argue,
17 would include the values of comparable mobile sports betting applications and the market
18 capitalization of the sports betting industry. In reality, however, these figures (even if
19 ascertainable) would not elucidate the value of the IP.² First, the Trustee is not aware of (nor do
20 the creditors identify) a comparable mobile sports betting application keyed to a now-defunct
21 semi-professional football league. Second, the total market cap of the sports betting universe does
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23

24 ¹ Capitalized terms not expressly defined herein shall have those meanings ascribed to them
25 in the Motion.

26 ² The Objection's proffered value range for the intellectual property is also not supported by
27 the documents the Creditor's submitted in support of the Objection. Compare Objection 11:15-18
28 (noting that the comparable value is between \$15,000,000 and \$34,000,000) and the Declaration
of Jonathon Farahi in Support of Creditors' Objection to Chapter 7 Trustee's Motion to
Compromise and Approve Settlement 2:22-25 (noting that comparable value is \$15,000,000, with
no mention of how this value could possibly expand to \$34,000,000, as argued in the Objection).

1 not have a correlation to the Debtors' niche IP.

2 3. Instead, the value of the underlying IP is best described through explanation of the
3 gaming application's key attributes and currently-existing limitations. The application was
4 intended to provide instantaneous in-game data from the Debtors' now-defunct football league to
5 mobile devices, giving bettors biomechanical data that they could use in play-by-play wagering.
6 Critically, however, the application was never fully developed. Instead, to realize the goal the
7 application's current iteration requires extensive, continuing development of its underlying
8 technology.
9

10 4. For example, the application's in-game betting feature was often thwarted because
11 it did not sync with the simultaneous TV broadcasts of the Debtors' on-going football games.
12 Moreover, it remains unclear which components of the now-idle application are actually finished.
13 Looking forward, it is similarly unclear whether other operating sports leagues would ever
14 support the technology. Without a sports league partner, the IP may have no realizable value.
15

16 5. The application is an ancillary product; without the companion football league, the
17 application is not a high value proposition, as currently constructed. Taken together, the niche,
18 next-play betting application's value does not approach the figures presented in the Objection.
19 See the Declaration of Scott Butera, attached hereto as Exhibit A.
20

21 6. Moreover, while the Objection notes that, "[m]ultiple parties have express that the
22 IP is worth at least nine figures,"³ the Creditors fail to present any admissible evidence.
23 Objection, 8:23-24. The Creditors do not disclose the identity of any of the "multiple third-
24 parties" or their bonafides to opine on this subject. Nor do the Creditors even begin to outline the

25 ³ The Objection's statement that, "Creditors discussion with outside third parties have made it
26 clear that any potential offers to the Estate by Creditors for the subject intellectual property will
27 result in more relief to the Estate than the current proposed settlement agreement," is similarly
28 vague and inadmissible. Objection, 7: 11-14. The Trustee submits that the evidence underlying
the Objection is inadmissible as hearsay and should be rejected. See Federal Rule of Evidence
802.

1 general terms of any purported offer. Put simply, the Creditors failed to submit any evidence
2 (admissible or otherwise) as to the value of the IP.

3 7. The Creditors' request that they be given more time to put together a venture and
4 perhaps credit bid their claims further reveals the Creditors' failure to understand the value of the
5 IP. If the Creditors have a higher offer which will pay MGM's secured claim in full and leave
6 money for the unsecured creditors, now is the time to bring any offers to the Court or put up a
7 non-refundable deposit of \$125,000.00 to protect the BK Estate for the loss of this Agreement.
8 The longer the IP sits idle, the more it ages toward technological obsolescence.

10 8. As noted in Cajun Electric, however, unsecured creditors simply do not and cannot
11 have a veto right over a settlement that is fair, and where that settlement is indispensable to the
12 efficient administration of the bankruptcy case. Official Comm. of Unsecured Creditors v. Cajun
13 Elec. Power Coop., Inc. (In re Cajun Elec. Power Coop., Inc.), 119 F.3d 349, 358 (5th Cir. 1997);
14 Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortg. Corp.), 68 F.3d 914, 919
15 (5th Cir. 1995) ("we are creating no per se rule allowing a majority of creditors in interest to veto
16 a settlement"); Plaza Equities LLC v. Pauker (In re Copperfield Invs., LLC), 401 B.R. 87, 96
17 (Bankr. E.D.N.Y. 2009) (approving settlement over the objection of the largest creditor and
18 noting that a creditor even a creditor holding the overwhelming majority of claims in the case-
19 may not arbitrarily veto a settlement that otherwise satisfies the criteria for approval.); Official
20 Comm. of Unsecured Creditors of Tower Auto. v. Tower Auto., Inc. (In re Tower Auto., Inc.),
21 241 F.R.D. 162, 171-72 (S.D.N.Y. 2006) (affirming approval of a settlement over the objection of
22 the creditors' committee, wherein retirees gave up significant value to creditors receiving
23 significant value); Vanguard Airlines, Inc. v. Sarah & William Hambrecht Found. (In re
24 Vanguard Airlines, Inc.), 302 B.R. 292, 306-07 (Bankr. W.D. Mo. 2003) (approving settlement
25 despite opposition of unsecured creditors).
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1 9. No model or estimate can pinpoint the ideal settlement amount. Rather, the Trustee
2 submits that based on a canvassing of all the factual and legal issues before the Court, the
3 proposed settlement that provides guaranteed recovery plus a significant claim reduction is well
4 within the range of reasonableness.

5 **No Unfair Advantage Exists**

6
7 10. At times the Objection seeks to focus on everything but the settlement itself. In
8 particular, the Creditors assert that the execution by MGM and the Debtors of pre-petition,
9 commercially reasonable agreements, typical of a \$7,000,000 investment, taint the settlement.
10 See Objection 6:1-13. The fact that the Debtors and MGM were parties to pre-petition agreements
11 does not render either the Trustee or MGM with unclean hands. Here, MGM was granted a
12 security interest, and its UCC-1 Financing Statement (perfecting its security interest in the IP)
13 was filed with the Delaware Department of State. Moreover, MGM was entitled under its
14 contracts to receive a license from the Debtors. Therefore, neither MGM's decision to enter into
15 a Note and Warrant Purchase Agreement in the Fall of 2018, nor its decision to protect its
16 commercial interests have any bearing on the agreement it negotiated with the Trustee.

17
18 11. Instead, the Trustee, as a fiduciary to the Debtors' estates, has been motivated by
19 several goals: (i) to guide the Debtors through bankruptcy; (ii) to resolve thorny intercreditor
20 issues among all parties-in-interest; and (iii) to the extent possible, obtain a distribution for
21 unsecured creditors. The value of the proposed settlement is that it provides the best available
22 prospect of achieving all three of these goals.

23
24 12. Moreover, the Settlement Agreement was the product of arm's-length negotiations
25 between the Trustee and MGM, as well as both parties' professionals. Following the Petition
26 Date, the Trustee and MGM worked diligently to effectuate the steps necessary to resolve
27 MGM's rights under the Security Agreement and the IP Agreement. As a result of these
28

1 combined efforts, the Trustee and MGM prepared the Settlement Agreement, which the Parties
2 agreed is a mutually acceptable resolution of their respective rights.

3 13. Once effective, the Settlement Agreement will also guarantee mutual certainty to
4 the resolution of the disputes between the Debtors and MGM, which otherwise may be the subject
5 of costly and time consuming litigation with uncertain outcomes. As a result, the Trustee believes
6 that the Settlement Agreement reaches a practical and economically sound resolution to several of
7 the issues presented by these cases. The Trustee, therefore, respectfully submits that the
8 Settlement Agreement is beneficial to the Debtors' estates, their creditors, and all parties-in-
9 interest.
10

11 CONCLUSION

12 The Motion satisfies each of the four prongs for approval of the Settlement Agreement.
13 Litigation with MGM would be costly and there is a reasonable probability MGM will succeed.
14 There is no evidence the IP has any value above MGM's \$7,000,000 claim, assuming litigation
15 would be successful, making collection difficult. The litigation surrounding the IP, which is
16 comprised of intricate technology, coupled with the complexity of the highly regulated gaming
17 and gambling industries make approval of the Settlement Agreement and the Motion appropriate
18 here. Last, there is no evidence to overcome the Trustee's business judgement here, nor is there
19 any evidence the Settlement Agreement is not fair and equitable. Based upon the foregoing, the
20 Trustee respectfully requests that the Bankruptcy Court: (a) overrule the Objection; (b) enter an
21 order granting the Motion in its entirety; and (c) grant such other and further relief as the
22 Bankruptcy Court deems just and proper.
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Exhibit A

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**DECLARATION OF SCOTT BUTERA IN SUPPORT OF THE
REPLY TO CREDITORS AND PARTIES-IN-INTERESTS COLTON
SCHMIDT & REGGIE NORTHUP'S, INDIVIDUALLY AND ON
BEHALF OF OTHERS SIMILARLY SITUATED, OBJECTION TO
THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
WITH MGM RESORTS INTERNATIONAL AND OPERATIONS, INC.**

Scott C. Butera, being duly sworn, deposes and says:

1. I am over the age of eighteen, mentally competent, and unless otherwise indicated, I have personal knowledge of the facts set forth herein. I submit this declaration in support of the Reply of Randolph N. Osherow, in his capacity as the Chapter 7 Trustee of Ebersol Sports Media Group, Inc., AAF Players, LLC, AAF Properties, LLC, Legendary Field Exhibitions, LLC, LFE 2, LLC, and We Are Realtime, LLC, (collectively, the "Debtors"), to the objection of the creditors and parties-in-interest, Colton Schmidt & Reggie Northup's, individually, and on behalf

1 of others similarly situated, to the Motion for Approval of Settlement Agreement (the "Motion")
2 with MGM Resorts International Operations, Inc. ("MGM"), pursuant to 11 U.S.C. § 105 and
3 Bankruptcy Rule 9019.

4 2. I am the President of Interactive Gaming at MGM, with over 25 years of
5 experience in finance and hospitality leadership.

6 3. I obtained my bachelor's degree in economics at Trinity College and a Master of
7 Business Administration degree from New York University's Leonard N. Stern School of
8 Business.

9 4. I am employed by MGM and started working with the company in 2018. Prior to
10 working for MGM, I served as the: (i) Commissioner of the Arena Football League; (ii) President
11 & CEO for Foxwoods Resort & Casino; (iii) President and CEO of Tropicana Entertainment; (iv)
12 Chief Operating Officer for Cosmopolitan Hotel & Casino Resort; (v) President of Metroflag
13 Management; and (vi) Chief Operating Officer and Executive Vice President of Trump
14 Entertainment Resorts, Inc.

15 5. I also have 20 years of experience in investment banking with UBS Investment
16 Bank, Credit Suisse First Boston, Smith Barney and Bear Stearns & Co.

17 6. In my current role as President of Interactive Gaming at MGM, I provide strategic
18 leadership on the development for interactive gaming – which includes sports betting and skill-
19 based gaming opportunities. I am also responsible for MGM's sports league and team
20 partnerships, as well as its digital media.

21 7. MGM is recognized as an industry leader in sports betting and cutting-edge
22 interactive gaming offerings as it brings more than 25 years of industry-leading expertise in sports
23 betting and strategic partnership building in the sector.

24 8. I am familiar with the intellectual property ("IP") that is the subject of the Motion,
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1 as well as MGM's contracts related to the IP.

2 9. Specifically, at the time the Debtors ceased their operations, the Debtors were still
3 developing the IP pursuant to the parties' contracts. The IP was intended to provide mobile
4 devices with instantaneous in-game data during the Debtors' live football games, which in turn
5 would provide gamblers with biomechanical data they could use when wagering. As of the date
6 of the bankruptcy filings, the IP was not operational.
7

8 10. Prior to the Debtors' bankruptcy cases, MGM loaned \$7,000,000 to the Debtors
9 (for purposes included the development of the IP), and MGM expects the IP will require several
10 million dollars more of investment to start operating.

11 11. In addition, once operational, the IP will need a sports league partner or partners to
12 generate revenue, and as of the date hereof, the IP does not have a partner. Similarly, once
13 functioning, MGM will need to market the IP sufficiently to acquire enough users of the
14 technology, such that it would be profitable. Presently, MGM does not know whether these
15 metrics can be achieved or that the IP could or would be profitable.
16

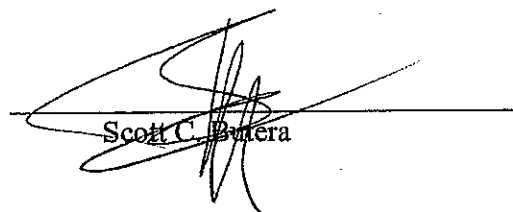
17 12. The IP is not the only technology of its kind in the market, and it has several
18 competitors. It is unclear at this time whether the IP can be developed so that it will be
19 competitive. Further, if the IP is not developed going forward, its value will diminish, and it may
20 become obsolete and unusable.
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22 [Signature Page to Follow]
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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
and correct.

Dated this 23rd day of July, 2019.


Scott C. Rivera

IN RE:	§	CHAPTER 7
LEGENDARY FIELD EXHIBITIONS, LLC;	§	CASE NO. 19-50900-CAG
AAF PLAYERS, LLC;	§	CASE NO. 19-50902-CAG
AAF PROPERTIES, LLC;	§	CASE NO. 19-50903-CAG
EBERSOL SPORTS MEDIA GROUP, INC.;	§	CASE NO. 19-50904-CAG
LFE 2, LLC;	§	CASE NO. 19-50905-CAG
WE ARE REALTIME, LLC	§	CASE NO. 19-50906-CAG
DEBTORS	§	(SUBSTANTIVE CONSOLIDATION OF ALL 6 CASES, INTO ONE CASE, LEGENDARY FIELD EXHIBITIONS, LLC, CASE NO. 19-50900-CAG) SUBSTANTIVELY ADMINISTERED UNDER CASE NO. 19-50900-CAG

I certify that copies of the Trustee's Response to Objection Filed by Boris Treyzon & Jonathon S. Farahi for Creditors Reggie Northup, Colton Schmidt, was served via United States first class mail, postage prepaid to the below parties and those parties registered to receive electronic notices in this case, on July 25th, 2019:

Jonathon Farahi
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